IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Chandrajeet Singh. Versus State of Rajasthan.

S.B. Criminal Revision Petition No. 385/2006 against the Order dated 17-4-2006 passed by the Sessions Judge, Jodhpur in Criminal Appeal No. 58/2006.

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Date of Order: May 25, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. O.P. Joshi, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

By this criminal revision petition under Section 397 read with Section 411 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 22-4-2006 passed by the Sessions Judge, Jodhpur (for short, "the Appellate Court" hereinafter) in Criminal Appeal No.58/2006, whereby the appeal on behalf of the petitioner against the order dated 17-4-2006 passed by the Juvenile Justice Board, Jodhpur in FIR No. 11/2006, has been dismissed.

The petitioner is facing trial for the offences under Sections 363, 366 and 376 IPC. The allegation against him is that he abducted the prosecutrix, a minor girl, and committed

rape on her.

Learned counsel for the petitioner submits that the petitioner is a juvenile below 18 years in age and is facing trial before the Juvenile Justice Board and as such, in view of the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the Act" hereinafter), he be released on bail. Learned Public Prosecutor has supported the orders passed by the courts below.

I have heard learned counsel for the petitioner and the Public Prosecutor.

Sub-clause (k) of Section 2 of the Act defines the word "juvenile" or "child", which reads as under:-

> "Sec. 2(k).- "Juvenile" or "child" means a person who has not completed eighteenth year of age."

Section 12 of the Act reads as under:-

> **"Section 12. Bail to Juvenile.-** (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into

association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2)When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3)When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

From th perusal of Section 12 of the Act, it is clear that a delinquent juvenile ordinarily has to be released on bail irrespective of nature of offence alleged to have been committed by him, unless it is shown by evidence that if he is released on bail, there appear reasonable grounds for believing that the release of delinquent juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Section 12 of the Act is a special provision injucting the courts from refusing bail to a delinquent juvenile except for the reasons stated in the section itself, i.e. if he be so released there are reasonable grounds for believing that he will come into association with any known criminal or expose him to

moral, physical or psychological danger or that his release would defeat the ends of justice.

At the time of consideration of bail under Section 12 of the Act, the merit or nature of offence has no relevancy. The language of Section 12 of the Act, using the word "shall" is mandatory in nature and providing non-obstante clause by using the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time-being in force be released on bail" shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court; however, with exception to release him on bail if there are reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It is for the prosecution to bring on record such material while opposing the bail and to make out any of the grounds provided in this Section which may persuade the court not to release the juvenile on bail.

The Act is beneficial and social-oriented legislation which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence of reasonable ground to believe that the delinquent juvenile, if release on bail, is likely to come into

association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail.

The petitioner is below 18 years in age and he is facing trial before the Juvenile Justice Board, Jodhpur. I have carefully gone through the statement of the prosecutrix recorded under Section 164 of the Code, wherein she stated that she was at the visiting terms with the petitioner and she went with him out of her sweet-will to Beawar and Gujarat and thereafter on being assured by her father that she would be married with the petitioner, she came back to home. Second time, she went with the petitioner on 17th January on a motorcycle and married with the petitioner in Neelkant temple at Beawar. She further stated that the petitioner performed sexual intercourse with her with her free consent. She has disclosed the various places where she went and lived with the petitioner. In view of the statement of the prosecutrix and keeping in view the provisions of Section 12 of the Act, I consider it just and proper the allow the revision petition.

Consequently, the revision petition is allowed. The impugned order dated 22-4-2006 passed by the Appellate Court is set aside and it is directed that petitioner Chandrajeet Singh

S/o Ghisa Singh by caste Rawat be released on bail provided his father Ghisa Singh furnishes a bail bond in the sum of Rs.20,000/- along with two sureties of Rs.10,000/- each to the satisfaction of the Juvenile Justice Board, Jodhpur that he will take care of the petitioner and keep him away from the company of the known criminals and produce him before the court as and when required to do so.

(H.R. PANWAR), J.

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